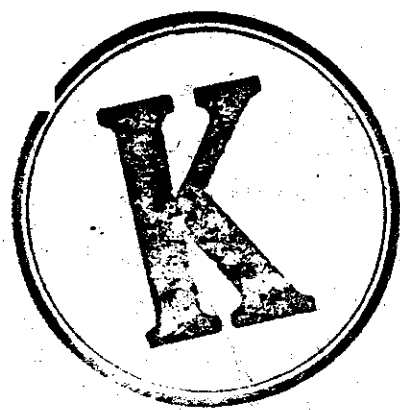




1952.

File No. *Op Sale of Goods* 52

54/52
Legal Department

G BRANCH

P-10

10

Subject:—*Opinion on the Sale
of Goods Act, 1952*

File No. *Op Sale of Goods* 52

Gen. 194 e.

54/52

C O N T E N T S.

Legal Department File No. O. Sales of Goods/1952.

Sr.No.	R.I. / O.No.	Subject.	Pages.
		Opinions on the Sale of Goods Act,	
1	<u>G-16</u> <u>11-1-52.</u>	Question whether prosecution &f launched against M/s. Patanjape & Co. for recovery of the excess amount will be -successful.	1-8.
2	<u>G-130</u> <u>27-3-52.</u>	Question whether the State Textile Controller is bound by the contract and pay for the bales contracted for -	9-12.
3	<u>G-234</u> <u>21-5-52.</u>	Question whether although no regular agreement is ~~executed~~ executed between Govt. & M/s. Madhukant & Co. the contract can be spelt out of the offer made by the said Co. in their letter dated 20-5-50 and the acceptance thereof communicated to the Co. by D.C.S. & Jt. Secy. to Govt. in his letter No.Tex-4131, dated 22/5/50.	13-22
4	<u>G-112</u> <u>11-9-52.</u>	Question whether there is a breach of sub-clause (2) of clause 25 of the Cotton Textiles (Control) Order, 1948 ~~committed~~ committed by Shri Joshi & Shri Thakkar.	23-24.

SRE/17.7.

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The question for consideration is whether a prosecution, if launched, against Messrs. Paranjape and Company for recovery of the excess amount will be successful.

The Civil Supplies Department seems to have mixed the concepts of civil and criminal proceedings. If a prosecution is launched, Messrs. Paranjape and Company may either be convicted or acquitted but the Criminal Court will ^{not} be able to effect the recovery of Rs. 37/- from the Company for Government. For such recovery a civil suit will have to be filed. The case may therefore be examined from the point of view of launching a prosecution and filing a civil suit.

As regards the question of filing a prosecution, clause 2 of the Poona District Hard Coke and Soft Coke Price Control Order, 1949 provides that no person shall sell Hard Coke at a price higher than Rs. 71-0-0 per ton. In this case the coke was not sold straightway at Rs. 90/- per ton but the Association agreed to sell it on the authority of a permit issued by the District Magistrate, on the following conditions to which both the parties agreed when called in the District Magistrate's Office to settle the matter:-

(i) The Coke will be supplied at Rs. 90/- per ton in advance which will be a tentative rate.

(ii) The final bills will be prepared according to the instructions of the Provincial Coal Controller and the amount of difference will be adjusted accordingly.

(iii) All the expenditure on account of weighment, gunnies, labour etc., should be borne by the purchaser. The conditional sale when it took place could not be said to be in violation of the Price Control Order as the rate was tentative and the final bill was yet to be prepared in accordance with the instructions of the Provincial Coal Controller. The price was under the agreement to be fixed by the Provincial Coal Controller. Therefore under section 9(1) of the Indian Sale of Goods Act, 1930 (Act III of 1930), the price of the sale was the price which the Provincial Coal Controller subsequently fixed for it. The amount paid in excess of that price is an amount for which the party holding the amount may be

...ole, but no prosecution can lie in respect of having received that payment or of refusing to refund."

It would be for the purchaser to decide whether he should file a suit against the seller for recovery of a paltry sum of Rs. 37/-.

Sd/- P.M.LAD.
11/1.

Remembrancer of Legal Affairs.

U.R. to C.S.D., No. G-16, dated the 11th January 1952. -

SNT/17.7.

Legal Department.

The Mills Co's letter, dated 22nd February 1952 and 29th February 1952, containing the offer and the State Textile Controller's letter, dated 1st March 1952 and 7th March 1952, containing the acceptance of the offer, form the contract of sale between the Mills and the State Textile Controller. Under para (vi) of the Textile Commissioner's afore-said order, dated 8th February 1951 it was open to the State Textile Controller to accept or to reject the offer within 14 days thereof. However, as in this case the offers were duly accepted by the State Textile Controller, the said para (vi) of Textile Commissioner's order has no bearing; for having once accepted the offer it was not open to the State Textile Controller to withdraw it. A contract of sale between the Mills Co. and the State Textile Controller has come into existence. This contract is an agreement to sell as defined in section 4(3) of the Indian Sale of Goods Act. Hence under section 56 of the Indian Sale of Goods Act if the State Textile Controller who is the buyer, wrongfully neglect or refuses to accept and pay for the goods, the Mills Co. who is the seller can successfully sue him (State Textile Controller) for damages for non-acceptance. Thus as the matters stand, the State Textile Controller is bound to lift and pay for the bales contracted for, failing which he would be liable to pay damages to the Mills Co. on the basis of the difference between the ^{the} contract prices and the current market prices which have gone down.

Sd/- P.H.IAD.

27/3.

Remembrancer of Legal Affairs.

U.R. to E.T.C., No. G - 130, dated the 27th March 1952.

Office of the R.L.A.

Though no regular agreement is executed between Government and Messrs. Madhukant and Company, the contract can be spelt out of the offer made by the said Company in their letter dated the 20th May 1950 and the acceptance thereof communicated to the Company by Director of Civil Supplies and Joint Secretary to Government in his letter No. Tex-4131 dated the 22nd May 1950.

The Company agreed to purchase all the quantities of yarn subject to the conditions mentioned in their letter dated the 20th May 1950. Condition 2 provides that "It is understood that yarns damaged or eaten by white ants etc. will not be taken by us." Condition 5 provides "The goods must be supplies to an F.O.R. Station of despatch and the Hurdie may be drawn by you in the name of the Provincial Textile Controller, Bombay; the Railway Receipts will be endorsed to us by the Provincial Textile Controller, on payment of full value bank commission etc., the bank commission not exceeding one anna per cent Freight will be paid by us direct to the Railway."

In his note dated the 26th July 1951, the Deputy State Textile Controller states that "as the yarn was in various districts we agreed as a matter of convenience to them that we would issue instructions to the respective District Magistrates to despatch the yarn to any party to whom it would be sold by the purchaser. Accordingly District Magistrates arranged for the despatch of the yarn in all these cases and in some cases, it has been found that the yarn was damaged. As soon as it was received by the purchaser at the other end, they complained to Madhukant and Company on the basis of which Madhukant and Company complained to us. The effect of section 41(1) of the Indian Sale of Goods Act is that where there has been no previous examination of the goods, the mere fact that the buyer has

taken delivery of them does not amount to an acceptance until he had a fair opportunity of examining them to see whether they are or are not in accordance with the contract. Where, as in the present case, goods contain a latent defect not discoverable by ordinary diligence at the place of delivery, the buyer may, notwithstanding an examination of goods at the place of delivery, on a subsequent inspection reject the goods, if they do not answer to the contract description. In order to postpone the place for inspection, it is necessary that there should be two elements: the original vendor must know, either because he is told or by necessary inference that the goods are going further on and the place at which he delivers must either be unsuitable or the nature of packing of goods must make inspections at that place unreasonable (see pp. 372-373 of *sale of Goods by Aggarwala*). The State Textile Controller was aware that the *goods to be sent to other persons who purchased the goods* from the Company and consequently it was not possible to inspect those goods until such purchaser received the goods.

The appropriate place for inspection by the buyer is a question of fact depending upon the circumstances of the case. It is normally the place of delivery of the goods in the buyer's country, but if the goods are bought for resale and are of a kind which cannot without injury be opened and reclosed, the proper place may be the premises of the final buyer. Even if resale by Messrs. Madhukant and Company is considered ~~as~~ amounting to acceptance of the goods, they would be entitled to payment of compensation for supply of damaged goods. The question on what goods damages should be allowed is a question of fact and will depend upon the fact whether damaged goods were loaded at the station of despatch as the contract was F.O.R. station of despatch.

Sd/- P.M.IAD.

31/5.

Remembrancer of Legal Affairs.

U.R. to S.T.C., No. C-234, dated the 31st May 1952.

Office of the R.L.A.

In this case, the time-barred cloth consisted of 20 bales which were ascertained and in a deliverable state. On the 26th May 1951 Shri Joshi, the proprietor of the Eastern Mercantile Syndicate made an offer to purchase these goods at a specified price (vide the letters at pages 9 & 161 of the file). It was an unconditional offer. The only thing that was required to be ascertained, if the offer was accepted, was the amount to be paid as price on the basis of the terms offered. This is permissible under section 9 of the Sale of Goods Act and does not affect the question of the passing of the property in the goods. The party also paid on the same date Rs. 1,900/- towards the cost of the goods. The payment was accepted and the offer of purchase itself was accepted by the B.E. & C.I. Railway Co., by its letter dated 1st June 1951 (p. 149 of the file) It would appear that before this acceptance was communicated in writing, the party knew that the offer was accepted, because in their letter to the Provincial Textile Controller on the 26th May 1951 (p. 127 of the file) the party stated that they have purchased the 20 bales. The party even went further and on the 30th May 1951, they entered into an agreement with Shri Thakkar Dharmashi Rajji wherein it is stated that they had purchased the cloth and that they had been sold the cloth in question to Shri Thakkar at a specified rate.

On the above facts it must be held that there was a completed contract of sale between the Railway Co, and Shri Joshi (vide sections 5 & 20 of the Sale of Goods Act). What Shri Joshi in his turn sold to Shri Thakkar was the goods that he was entitled to sell and the transaction between him and Shri Thakkar was a transaction of sale and purchase respectively. Therefore a breach of sub-clause (2) of clause 25 of the Cotton Textile (Control) Order, 1948, has been committed by Shri Joshi and Shri Thakkar.

Sd/- P.M.LAD. 11/2.

U.R. to S.T.C.Eo.C-440, dt. 11th September 1952. Remembrance of Legal Affairs.